



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,296	07/09/2003	William C. Eungard	87353.2961	7071

7590 05/03/2006

BAKER & HOSTETLER LLP
Washington Square
Suite 1100
1050 Connecticut Avenue, N.W.
Washington, DC 20036

EXAMINER

A, PHI DIEU TRAN

ART UNIT	PAPER NUMBER
----------	--------------

3637

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/615,296

Applicant(s)

EUNGARD, WILLIAM C.

Examiner

Phi D. A

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3637

1. PRODUCT BY PROCESS CLAIM:

“ The subject matter present is regarded as a product by process claim in which a product is introduced by the method in which it is made. It is the general practice of this office to examine the final product described regardless of the method provided by the applicant.”

The limitation of “blow mold” is treated accordingly to the office policy set forth above.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitations of claims 9, 23, 35, 45,-46, 48, 53-55 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 23, 27, 54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 23 “ line 3 “ a first axis” is confusing as it is not consistent with the first axis already claimed.

Claim 27, last paragraph 9 “the first panel is mountable...” is confusing as it is unclear “ which first panel” is being claimed.

Claim 54 is a redundant claim as the limitations is already claimed in claim 53.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-11, 13-22, 25-34, 42-44, 56 are rejected under 35 U.S.C. 102(b) as being anticipated by Brockman et al (5185977).

Art Unit: 3637

Brockman et al shows a panel assembly mountable along an opening in a dock wall, the dock wall having a front face (the face which part 222 attaches to) around the sides of the opening, an inside face (the face to the right of part 220 figure 3), facing into the opening, the front face and inside face meeting at a corner, comprising a first panel (220'), a second panel (240, 224', 222'), the second panel is adapted for essentially pivotal movement relative to the first panel about a first axis, the first panel is adapted for essentially pivotal movement relative to the dock wall about a second axis(at 230), the first panel is mountable to the front face of the dock wall (the panel 220' is shown attached to the front face per anchoring bolt 226 and part 222) so that the second axis is adjacent the front face and spaced laterally outside of the corner (the axis at 230 is adjacent to and spaced from and laterally outside of the corner as the axis is to the left of the corner), the first panel having a front edge, a rear edge, the second panel having a front edge and rear edge, the rear edge of the second panel being pivotally connected to the front edge of the first panel, the rear edge of the second panel is hingedly connected to the front edge of the first panel, the rear edge of the second panel is castellated and the front edge of the first panel being also castellated such that the rear edge of the second panel and the front edge of the first panel interlock to form a hinge joint (figure 2), a stay (the part joining the panels together), the panel assembly having a length and the stay is positioned in an opening extending the length of the panel assembly through the castellated front edge of the first panel and the castellated rear edge of the second panel, the stay biases the panel assembly to an open position (inherently so as the figures 3-4 show the assembly being in open positions), the panel assembly having an interior face on the side of the dock opening and an opposing exterior face, the panel assembly further comprising at least one backing member(160) positioned at the first axis on the interior face of

Art Unit: 3637

the panel assembly, the backing member (160) biases the panel to an open position where the second panel is held away from the first panel, the backing member is springs, the first panel having recessed portion at or near the front edge of the first panel, the second panel having a recessed portion at or near the rear edge of the panel, the backing member is adapted to fit between the recessed portions, the first panel and the second comprising a rigid but flexible material, at least one of the first or second panels comprise a plurality of panel portions which assembled to form the first or second panels, the rear edge of first panel is indirectly mountable to the dock wall, the panel assembly further comprising at least one L-shaped bracket for flexibly mounting the rear edge of the first panel to the dock wall, a seal member (250) located at the front edge of the second panel, the seal is integral with the second panel, the seal member comprising a hook portion located at the front edge of the second panel, the hook portion comprising a sealing strip, the first panel having a length and the second panel having a length and the length of the first panel and length of the first panel and the length of the second panel being sized for vertical mounting along the opening in the dock wall, the first panel having a length and the second panel having a length of the first panel and the length of the second panel being sized for horizontal mounting along the width of the opening in the dock wall, the dock further comprising at least a second panel assembly, the first panel assembly is directly mountable along a side of the opening in the dock wall which is approximately perpendicular to the dock floor (the assembly including part 220), the second panel assembly is indirectly or directly mountable along a second side of the opening in the dock wall which is also approximately perpendicular to the dock floor, the dock having a dock floor, the dock shelter further comprising a top portion panel assembly (110), the top portion panel assembly is directly

Art Unit: 3637

mountable to a side of the opening in the dock wall which is parallel to the dock floor and the top portion panel assembly is positioned along the dock wall above and substantially perpendicularly to the first and second assemblies, at least one of the first, second or top panel assemblies each further comprising a sealing member, the assembly being expandable, the first panel assembly comprising a rear first panel (220') having a front edge and a rear edge, a front first panel (224', 222', 240) having a front edge and a rear edge, a first seal portion (252), the rear edge of the front first panel is pivotally connected to the front edge of the rear first panel defining a first axis of rotation, the rear edge of the rear first panel is adapted for essentially pivotal movement relative to the dock all about a second axis of rotation and is directly or indirectly mountable to a first vertical side of the dock wall opening, the first seal portion is located at the front edge of the front first panel, a second panel assembly comprising a rear second panel having a front edge and a rear edge, a front second panel having a front edge and a rear edge, a second seal portion (the second assembly being identical assembly on the other side of the opening of the dock), the rear edge of the front second panel is pivotally connected to the front edge of the rear second panel defining a third axis of rotation, the rear edge of the rear second panel is adapted for essentially pivotal movement relative to the dock wall about a fourth axis of rotation and is mountable to a second, opposing vertical side of the dock wall opening, the second seal portion is located at the front edge of the front second panel, the first, second, third, and fourth axes of rotation are substantially parallel to one another, the first panel is mountable to the front face of the dock wall so that the second axis is adjacent the front face and spaced laterally outside of the corner, the assembly is expandable (inherently able to be adapted to accommodate the different truck widths as set forth), the first expandable panel assembly directly mountable to the dock wall and

Art Unit: 3637

configured to sealingly engage trucks of varying widths (part 222, 220 being part of the assembly), the first panel assembly comprising a rear panel means, a rear panel means (first and second panels), the front panel means being operably coupled to the rear panel means by a hinge means, the seal member comprising a serrated portion (shown by part 246 and its adjacent surface), a top sealing member means located at an edge of the top front panel means, the top front panel means being operably coupled to the top rear panel means such that the top front panel means deflects toward the dock wall opening, a seal member located at the front edge of the second panel, the seal being a separate component attached to the second panel.

3. Claims 50-52 are rejected under 35 U.S.C. 102(e) as being anticipated by Miller et al (6948285).

Miller et al shows a panel assembly mountable along an opening in a dock wall (figure 2) comprising a first panel (28) second panel (52), the second panel is adapted for essentially pivotable movement relative to the first panel about a first axis, the first panel is adapted for essentially pivotable movement relative to the dock wall about a second axis, the first and second panel being hingely joined by a hinge (50) comprising a backing member (58), the backing member seals the panel at the hinge region, the backing member extends substantially all the height of the panel assembly at the hinge region, a seal member (64) located at the front edge of the second panel.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3637

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman et al (5185977).

Brockman et al shows all the claimed limitations. The claimed method steps of providing shelter about the end of a vehicle body parked at a dock opening would have been the obvious method steps of providing Brockman et al's shelter for vehicle's ends.

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman et al (5185977).

Brockman et al shows all the claimed limitations except for the material being blow molded.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Brockman et al's structure to show being blow molded because blow molding, extrusion, cold rolled, hot roll etc...are well known process for forming panels.

7. Claims 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman et al (5185977) in view of O'Neal (4070801).

Brockman et al shows all the claimed limitations except for the top portion panel assembly having a first and second panel, the second panel being adapted for essentially pivotal movement relative to the first panel about a first axis, the first panel is directly mountable to the dock wall.

Art Unit: 3637

O'Neal shows a top portion panel assembly having a first and second panels (13, 16), the second panel being adapted for essentially pivotal movement relative to the first panel about a first axis, the first panel is directly mountable to the dock wall.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Brockman et al's structure to show the top portion panel assembly having a first and second panel, the second panel being adapted for essentially pivotal movement relative to the first panel about a first axis, the first panel is directly mountable to the dock wall because it would allow for the easy sealing of a vehicle top as taught by O'Neal.

8. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman et al (5185977) in view of O'Neal (4070801).

Brockman et al shows all the claimed limitations except for the top portion panel assembly having a top rear panel means, a top front panel means, a top sealing member means located at an edge of the top front panel means, the top front panel means deflecting toward the dock wall opening when the top portion panel assembly is engaged by the vehicle, the top rear panel means is mountable along horizontal side of the dock wall openings.

O'Neal shows for the top portion panel assembly having a top rear panel means (13), a top front panel means(16),b a top sealing means (20) located at an edge of the top front panel means, the top front panel means deflecting toward the dock wall opening when the top portion panel assembly is engaged by the vehicle, the top rear panel means is mountable along horizontal side of the dock wall openings.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Brockman et al's structure to show the top portion panel assembly having a

Art Unit: 3637

top rear panel means, a top front panel means, a top sealing member means located at an edge of the top front panel means, the top front panel means deflecting toward the dock wall opening when the top portion panel assembly is engaged by the vehicle, the top rear panel means is mountable along horizontal side of the dock wall openings because it would allow for the easy sealing of a vehicle top as taught by O'Neal.

9. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman et al (5185977) in view of O'Neal (4070801) as applied to claim 35 above and further in view of Alten (5174075)

Brockman et al shows all the claimed limitations except for a first corner panel adapted to overlap the top portion panel assembly and the first expandable panel assembly when mounted, a second corner seal adapted to overlap the top portion panel assembly and the second expandable panel assembly when mounted.

Alten shows a first corner panel(8, 7, right) adapted to overlap the top portion panel assembly and the first expandable panel assembly when mounted, a second corner seal (8, 7, left) adapted to overlap the top portion panel assembly and the second expandable panel assembly when mounted.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Brockman et al's modified structure to show a first corner panel adapted to overlap the top portion panel assembly and the first expandable panel assembly when mounted, a second corner seal adapted to overlap the top portion panel assembly and the second expandable panel assembly when mounted because the corner panel seals would provide protection against any gaps between the top seal and the side seals as taught by Alten.

Art Unit: 3637

10. Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman et al (5185977) in view of O'Neal (4070801).

Brockman et al as modified by O'Neal shows all the claimed limitations. The claimed method steps of providing shelter about the end of a vehicle body parked at a dock opening would have been the obvious method steps of providing shelter with Brockman et al's modified structure for vehicle's ends.

11. Claims 45-47, 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman et al (5185977) in view of O'Neal (4070801).

Brockman et al as modified by O'Neal shows all the claimed limitations except for the L-shaped spring is an elastomer extrusion, the spring being of fiberglass composite material, the spring being a mounting angle thermo-formed into the first panel.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Brockman et al's modified structure to show the L-shaped spring is an elastomer extrusion, the spring being of fiberglass composite material, the spring being a mounting angle thermo-formed into the first panel because having the spring being of an elastomer extrusion, fiberglass composite material, being a mounting angle thermo-formed, spring steel allow for the spring member to be flexible and yet able to retain its shape; furthermore, choosing one of claimed material appears to be an obvious matter of engineering design choice since applicant has not disclosed the materials solve any particular problem or is for any particular purpose, and the fact that applicant discloses the spring can be made of a variety of material further reinforces the use of any one of the material being an obvious matter of engineering design choice.

Art Unit: 3637

Brockman et al as modified by O'Neal shows all the claimed limitations. The claimed method steps of providing shelter about the end of a vehicle body parked at a dock opening would have been the obvious method steps of providing shelter with Brockman et al's modified structure for vehicle's ends.

12. Claims 37-40, 41, 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman et al (5341613) in view of O'Neal (4070801).

Brockman et al shows a shelter about the end of a vehicle body parked at a dock opening and an inside face facing into the opening (figures 1-2), with the front face and the inside face meeting at a corner, a first panel assembly attached to a first vertical side of the dock opening, the first panel assembly comprising a first front panel assembly (210), a first rear panel (224), the first front panel being adapted to essentially pivotally movement relative to the first rear panel around a first axis, the first panel assembly comprising flexibly mounting the first rear panel to the dock wall, a second panel assembly installed to a second vertical side of the dock opening, the second panel assembly comprising a second front panel and a second rear panel, the second front panel being adapted for essentially pivot movement relative to the second rear panel about a second axis, the second panel assembly comprising flexibly mounting the second rear panel to the front face of the dock wall, the first panel is mountable to the front face of the dock wall (150) so that the second axis is adjacent the front face and space laterally outside of the corner, the first panel assembly indirectly mounted to the dock wall, the first axis of rotation and the second axis of rotation being substantially perpendicular to the dock floor and substantially parallel to one another, a top portion assembly (110) along a top horizontal side of the dock wall opening, the

Art Unit: 3637

first panel is flexibly mounted to the dock wall using an L-shaped spring (the part connecting part 224' to part 222).

Brockman et al shows all the claimed limitations except for the top portion assembly comprising a top front panel and a top rear panel.

O'Neal shows for the top portion panel assembly having a top rear panel means (13), a top front panel means(16), the top rear panel means is mountable along horizontal side of the dock wall openings.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Brockman et al's structure to show the top portion assembly comprising a top front panel and a top rear panel. because it would allow for the easy sealing of a vehicle top as taught by O'Neal.

Brockman et al as modified by O'Neal shows all the claimed limitations. The claimed method steps of providing shelter about the end of a vehicle body parked at a dock opening would have been the obvious method steps of providing shelter with Brockman et al's modified structure for vehicle's ends.

13. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman et al (5341613) in view of O'Neal (4070801).

Brockman et al as modified shows all the claimed limitations except for the first panel being flexibly mounted to the dock wall using triangular foam blocks.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Brockman et als' modified structure to show the first panel being flexibly mounted to the dock wall using triangular foam blocks because using triangular foam blocks in

Art Unit: 3637

place of steel bracket or plastic bracket would allow for the installation of a light weight assembly.

Brockman et al as modified by O'Neal shows all the claimed limitations. The claimed method steps of providing shelter about the end of a vehicle body parked at a dock opening would have been the obvious method steps of providing shelter with Brockman et al's modified structure for vehicle's ends.

14. Claims 53-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al (6948285).

Miller et al shows all the claimed limitation except for the backing member comprising a fiberglass composite spring.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Miller et al's structure to show the backing member comprising a fiberglass composite spring because fiberglass composite spring, steel spring, elastomer spring are well known, equivalent functional spring as they all function to provide a spring property to the structure despite the different material, and the use of any of these known spring would be within one of ordinary skill in the art.

15. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al (6948285).

Miller et al shows all the claimed limitation except for backing member comprising a triangular foam blocks.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Miller et als' structure to show backing member comprising a triangular

Art Unit: 3637

foam blocks because using triangular foam blocks in place of steel spring would allow for the installation of a noise free springing assembly.

Response to Arguments

16. Applicant's arguments with respect to claims 1-56 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different dock shelter designs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Tuesday, Thursday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phi Dieu Tran A

4/29/06